

1 Sacha V. Emanuel (SBN 218705)
2 svemanul@aol.com
3 Attorney at Law
4 10250 Constellation Boulevard, Suite 2320
5 Los Angeles, California 90067
6 Phone: (310) 525-3568
7 Fax: (310) 525-3528

8 Attorney for defendants
9 Conan Sales Co., LLC, Conan Properties International LLC,
10 Paradox Entertainment, Inc., Paradox Entertainment AB
11 and Fredrik Malmberg

12 UNITED STATES DISTRICT COURT
13
14 CENTRAL DISTRICT OF CALIFORNIA

15 STAN LEE MEDIA, INC., a Colorado
16 corporation,

17 Plaintiff,

18 vs.

19 CONAN SALES CO., LLC, a Delaware
20 limited liability company; CONAN
21 PROPERTIES INTERNATIONAL LLC,
22 a Delaware limited liability company;
23 PARADOX ENTERTAINMENT, INC.,
24 a Delaware corporation; PARADOX
25 ENTERTAINMENT AB, a Sweden
26 corporation; FREDRIK MALMBERG;
27 ARTHUR LIEBERMAN; JUNKO
28 KOBAYASHI; GILL CHAMPION; and
DOES 1-10, inclusive,

Defendants.

Case No.: CV11-06861-SVW (SSx)

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF DEFENDANTS'
MOTION TO DISMISS
COMPLAINT OF STAN LEE
MEDIA, INC.**

Assigned to the Honorable Stephen V.
Wilson in Courtroom 6

Hearing Date: November 21, 2011

Time: 1:30 p.m.

Courtroom: 6

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I. Introduction

The complaint of plaintiff, Stan Lee Media, Inc. (“SLMI”), should be dismissed because it is an impermissible and untimely collateral attack on a settlement approval order, SLMI sought, in its bankruptcy proceeding almost nine and a half years ago. None of SLMI’s claims are timely. Nor has SLMI stated a cognizable legal theory of recovery in its complaint against moving parties Conan Sales Co., LLC (“CSC”), Conan Properties International LLC (“CPI”), Paradox Entertainment, Inc. (“PEI”), Paradox Entertainment AB (“PEA”) and Fredrik Malmberg (“Malmberg”) (collectively, “the Moving Parties”).

This case is one of a number of cases filed by SLMI over the years challenging various orders made during its bankruptcy process. With respect to the order at issue in this case, SLMI failed to appeal the order or otherwise seek review of it in the bankruptcy court. Instead, SLMI filed this baseless, independent action (a collateral attack) almost a decade after the order was entered.

In the First Claim, SLMI seeks to set aside the order approving a settlement stipulation (“the Settlement Approval Order” or “Order”) between SLMI and one of its secured creditors, defendant and moving party, CSC, which is now called Conan Properties International LLC (“CPI”)¹. Pursuant to the stipulation and Settlement Approval Order, SLMI agreed to assign stock in a corporation, Conan Properties,

¹ CSC’s name was changed to Conan Properties International LLC on or about November 7, 2002. (See Exhibit “A” to Request for Judicial Notice (“RFJN”)).

1 Inc ("CP"), and certain contract rights relating to intellectual property owned by
2 CP, back to CSC, the company from whom SLMi had originally acquired the stock.
3 Since at least 2002, SLMi has been fully aware of the Settlement Approval Order
4 and the circumstances surrounding its entry.
5

6 SLMi has also had constructive notice of the facts that relate to its claims for
7 several years. SLMi has been involved in other litigation, including litigation
8 before this Court, relating to the same bankruptcy since as early as January, 2007.
9 (See QED Productions, LLC v. Nesfield, Case No. CV 07-0225 SVW). In
10 addition, as alleged in the complaint, the intellectual property rights sold to CSC
11 have been openly exploited by CSC/CPI since in or around 2003. Despite being on
12 constructive notice of its claims for years, SLMi has failed to allege facts make a
13 factual showing that justifies its substantial delay in challenging the Order.
14 Furthermore, given SLMi's substantial and unjustified delay, if the Order were set
15 aside, the Moving Parties, who have exploited, enforced and protected the
16 intellectual property for almost a decade, would suffer substantial undue prejudice.
17

18 SLMi's challenge to the Order on the grounds that it failed to give notice to
19 some of its shareholders or disclose certain information to the bankruptcy court
20 when seeking the order is not only untimely but it has no merit. SLMi has failed to
21 allege any facts which show that it has standing to assert the claims of unknown
22 and unidentified shareholders, or that individual shareholders would have had
23 standing to object to the stipulation.
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1 Furthermore, the Bankruptcy Code does not require that notice of motions,
2 such as the one filed, be given to shareholders. All that is required is notice and a
3 hearing “as is appropriate in the particular circumstances”. The bankruptcy court in
4 the underlying case found that notice, which was given by SLMI’s own bankruptcy
5 counsel, was “appropriate in the particular circumstances” and that a hearing was
6 unnecessary “in the particular circumstances”. SLMI has pled no facts which show
7 that the bankruptcy court’s decision should be second guessed.
8

9
10 SLMI’s other ground in setting aside the Order is also untimely and baseless.
11 SLMI alleges that it should be relieved from the bankruptcy court’s Order because
12 certain information relating to the circumstances surrounding its entry, or persons
13 related to SLMI, was not disclosed to the bankruptcy court. These allegations fail
14 because SLMI knew or should have known about them years ago. Furthermore,
15 they are insufficient to show a fraud on the court. Non-disclosure of information,
16 alone, does not constitute fraud on the court. Moreover, SLMI’s allegations are
17 simply too vague and lacking in specificity to meet the heightened standard
18 necessary to show a fraud on the court². With respect to the Moving Parties, there
19 are no facts from which one could conclude that they had a duty to disclose any of
20 the information allegedly not disclosed. Nor are there facts alleged from which one
21 could conclude that SLMI was prevented from fully or fairly presenting its case.
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28 ² There are no substantive factual allegations regarding the Moving Parties’
alleged involvement in the bankruptcy proceeding, let alone, the alleged fraud on
the court.

1 SLMI was represented in the bankruptcy by outside counsel who opposed CSC's
2 motion for relief from stay. The settlement Stipulation was extensively negotiated,
3 and SLMI sought approval of it through its Motion. Therefore, there has not been,
4 nor can there be, a showing of fraud on the court.

6 Because SLMI improperly asserts as a collateral matter that the Order is
7 void, has failed to plead facts that show that the order is void, and has failed to
8 timely seek relief from the Order, the First Claim for Relief should be dismissed.

10 SLMI's Second, Third, Fifth, Sixth and Seventh Claims for Declaratory
11 Relief, Avoidance of Transfer, Restitution, Accounting and Constructive Trust
12 should also be dismissed. These claims are all dependent upon SLMI's First Claim
13 for Relief from Order, which for the reasons previously stated, fails as a matter of
14 law. They are also barred by the applicable statute of limitations and/or otherwise
15 insufficiently pled.

18 SLMI's Fourth Claim for Breach of Fiduciary Duty is also untimely and
19 lacking in merit insofar as it is alleged against the Moving Parties. Like the other
20 claims, the facts that give rise to this claim allegedly occurred in or around 2002.
21 No justifiable excuse has been pled for the substantial delay in pursuing this claim.
22 Even if it had been timely pursued, SLMI has failed to allege on what basis the
23 Moving Parties owed a fiduciary duty to SLMI. Because the existence of a
24 fiduciary duty has not been pled, the Moving Parties cannot be liable for SLMI's
25 Fourth Claim.

1 Lastly, SLMI has failed to allege any substantive factual allegations of
2 wrongdoing on the part of the Moving Parties or that an inequitable result would
3 occur if their separate existence were recognized. It is unclear why CPI, PEI, PEA
4 or Mr. Malmberg are even named as defendants? There are virtually no substantive
5 factual allegations of wrongdoing alleged against these parties, or any explanation
6 as to why their separate existence should not be recognized. These parties should
7 therefore be dismissed from this case.
8
9

10 **II. Statement of Facts**

11
12 SLMI filed its complaint against the Moving Parties and defendants Arthur
13 M. Lieberman, Junko Kobayashi and Gil Champion on August 19, 2011, the very
14 day of the worldwide premiere of the film *Conan the Barbarian*. No demand letter
15 or notice was given to any of the Moving Parties prior to the filing of the complaint.
16 One can only presume that this ambush was intended to, and did, embarrass the
17 Moving Parties at a very important time. (See Exhibit "B" to RFJN).
18
19

20 In its complaint, SLMI attempts to allege seven claims against the Moving
21 Parties for: (1) Relief from Order; (2) Declaratory Relief; (3) Avoidance of
22 Transfer; (4) Breach of Fiduciary Duty; (5) Accounting; (6) Restitution of Unjust
23 Enrichment; and (7) Constructive Trust³. All of SLMI's claims pertain to acts or
24
25

26 ³ The list of claims in the caption in SLMI's complaint does not match the
27 numerical manner in which the claims are laid out in the body of the complaint.
28 For example, in the caption, SLMI's Fifth Claim is for Restitution of Unjust
Enrichment, yet, in the body of the complaint, the Fifth Claim is for an Accounting.
For purposes of this Motion, the Moving Parties refer to the body of the complaint
to determine the claim number.